

kv77210- 1

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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JOSEPH F. HUTCHINSON, et al.,

Plaintiffs,

vs.

FIFTH THIRD BANCORP,

Defendant.

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CASE NO.  
C- 1- 01- 789

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Deposition of: JOHN A. BUCHHEID  
Taken: By the Defendant  
Pursuant to Notice

Date: May 17, 2005

Time: Commencing at 1:30 p.m.

Place: Deters, Benzinger &  
LaVelle, P. S. C.  
3500 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202

Before: Karen Volk, RPR  
Notary Public - State of Ohio

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APPEARANCES:

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On behalf of the plaintiffs:

John R. Kirk, Esq.  
of  
Deters, Benzinger & LaVelle, P. S. C.  
Thomas More Park  
207 Thomas More Parkway  
Crestview Hills, Kentucky 41017-2596  
and  
William J. Moran, Jr., Esq.  
of  
Deters, Benzinger & LaVelle, P. S. C.  
3500 Carew Tower  
441 Vine Street  
Cincinnati, Ohio 45202-3007

On behalf of the defendant:

Patrick F. Fischer, Esq.  
of  
Keating Muething & Klekamp, PPL  
1400 Provident Tower  
One East Fourth Street

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Cincinnati, Ohio 45202

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(Exhibit 1 was marked for identification.)

JOHN A. BUCHHEID

of lawful age, a plaintiff herein, being first duly sworn as hereinafter certified, was examined and deposed as follows:

CROSS- EXAMINATION

BY MR. FISCHER:

Q. State your full name.

A. John Buchheid.

Q. And address?

A. 4655 Plantation Lane, Batavia, Ohio, 45103.

Q. Let me show you what's been marked as Exhibit 1. Have you seen that document before?

A. I'm not sure.

Q. That's an amended notice of deposition for your deposition.

MR. KIRK: I don't think he's seen anything about the notice.

A. My name is misspelled.

Q. Misspelled?

A. Misspelled. No, I haven't seen those.

Q. You're here pursuant to a notice in a case

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24 titled Hutchinson, et al vs. Fifth Third Bancorp?

25 A. Yes.

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1 Q. You understand that you're a named  
2 plaintiff in that case?

3 A. Yes.

4 Q. Let's do some background. College, did  
5 you go to college?

6 A. Yes, I did.

7 Q. Did you graduate?

8 A. Yes, I did.

9 Q. From where?

10 A. University of Cincinnati.

11 Q. What year?

12 A. 1980.

13 Q. Good year.

14 A. Yeah.

15 Q. What major?

16 A. Bachelor's in finance.

17 Q. And did you become employed soon  
18 thereafter graduation?

19 A. Yes. I was working for a local savings  
20 and loan at the time. I had a co-op job, which  
21 was one of the reasons I went to UC, which was the  
22 old Standard Federal Savings.

23 Q. What did you do at Standard?

24 A. Started out as a teller, worked my way up  
25 through the savings department essentially, accepted

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1 a full-time job with them upon graduation.

2 Then I had interviewed with Xerox and  
3 shortly thereafter went to work for Xerox that  
4 summer, late that summer, 1980.

5 Then while at Xerox I went back to Xavier  
6 University for my MBA, which I got in 1983.

7 Q. Any specialty in the MBA?

8 A. Business economics.

9 Q. Did you go full time?

10 A. No.

11 Q. Were you going at night?

12 A. Going at night, weekends.

13 Q. What did you do at Xerox?

14 A. Started out in their credit department,  
15 basic administrative area. The last year with Xerox,  
16 was promoted to an internal control auditing type  
17 position where I traveled to six or seven of their  
18 branches around this part of the country, ensuring  
19 compliance with internal Xerox policies and  
20 procedures.

21 Q. After -- did you stay with Xerox after  
22 your graduation with the MBA?

23 A. Yes.

24 Q. For how long were you with Xerox?

25 A. Turned out to be about 4 1/2 years, I

0007

1 believe.

2 Q. So sometime in '84, '85?

3 A. Yes.

4 Q. Changed jobs?

5 A. Yes.

6 Q. Let me ask you something. Put your hand  
7 down, it's hard for her to hear you.

8 A. Sorry.

9 Q. I kind of understand what's going on.

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10 A. No problem.  
 11 Q. Have you ever been deposed before?  
 12 A. Yes.  
 13 Q. So you understand I'm asking questions,  
 14 you're answering them, correct?  
 15 A. Yes.  
 16 Q. If you don't understand a question, ask me  
 17 to rephrase it or something.  
 18 A. Will do.  
 19 Q. Okay. We'll try not to talk over each  
 20 other, let her -- she can only type one person at a  
 21 time.  
 22 A. Okay.  
 23 Q. All right. So sometime '84, '85 you  
 24 changed jobs. What was that to?  
 25 A. Went to work for a company that's no  
 0008 longer in existence by the name of Eczel Corporation,  
 1 spelled E-c-z-e-l. The cz spelling was because the  
 2 parent company was Crown Zellerbach, big paper  
 3 company.  
 4 The person that actually hired me at Xerox  
 5 originally had left Xerox, went to work for the local  
 6 office of Eczel. And they sold a lot of computer  
 7 accessories and office supplies, and there was a  
 8 similar, I guess, marketing bend to the company.  
 9 Several people at Xerox had left and gone to Eczel so  
 10 it was a good opportunity for me.  
 11 Q. What did you do there?  
 12 A. A number of different things, customer  
 13 service, system administrator on their computer  
 14 system.  
 15 Q. Anything else? Anything in the financial  
 16 area?  
 17 A. No.  
 18 Q. How long were you at Eczel?  
 19 A. About a year and a half. They ended --  
 20 Crown Zellerbach went through a hostile takeover.  
 21 And we were a start-up company within -- under Crown  
 22 Zellerbach and they consolidated like 22 offices into  
 23 four. So that was a short-lived position.  
 24 Q. So '86 sometime?  
 25 0009 A. Yeah. Can I refer to my resume? Is that  
 1 okay?  
 2 Q. I didn't know he had one. Do you want to  
 3 mark it? We can do this faster.  
 4 A. Yeah.  
 5 Q. Let's take a break.  
 6 (Off the record.)  
 7 (Exhibit 2 was marked for identification.)  
 8 Q. Mr. Buchheid, I've handed you what's been  
 9 copied and marked as Exhibit 2. Do you see that?  
 10 A. Yes, I do.  
 11 Q. Can you identify for the record what that  
 12 document is?  
 13 A. It's a resume that I've prepared, my own  
 14 resume. Yes, my own work history.  
 15 Q. You worked for -- we talked about Eczel  
 16 Corporation. After that you worked for the U.S.  
 17 Treasury Department, is that correct?  
 18 A. Yes, as a bank examiner for the  
 19 comptroller, the currency also known as the OCC.  
 20 Q. What did that involve?  
 21

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22 A. Examining small banks.  
 23 Q. It says assistant national bank examiner.  
 24 Were they all national banks?

25 A. Yes. OCC is the regulator for national  
 0010

1 banks, which are a federally chartered bank as  
 2 compared to state charter. So that was actual --  
 3 that was a job title that went along with the grade  
 4 level designation, working for a government job.

5 Q. Then in 1988, still in the Treasury  
 6 Department, you moved over to the office of thrift  
 7 supervision, is that correct?

8 A. Yes, but I've combined it showing it on my  
 9 resume more for ease of reading. When I left the  
 10 OCC, I went to work for the Federal Home Loan Bank of  
 11 Cincinnati, which at the time was not affiliated with  
 12 the U.S. Treasury.

13 1989, after some significant legislation,  
 14 all the Federal Home Loan Banks around the country  
 15 got merged into the U.S. Treasury Department, became  
 16 office of thrift supervision, so I really just  
 17 abbreviated all of that for my resume purposes.

18 Q. And there you were also an examiner?

19 A. No, I was a supervisory analyst working  
 20 with the exam reports, was one of the things I did.  
 21 It was a little more of a financial analyst type of  
 22 job.

23 Q. And that job ended sometime in '91, is  
 24 that correct?

25 A. Yes. I went to work for Suburban Federal  
 0011

1 immediately upon leaving OTS, the office of  
 2 thrift supervision.

3 Q. From the time leaving college through the  
 4 end of your work with the office of thrift  
 5 supervision, the OTS, did you have any training or  
 6 background in ERISA or ESOP?

7 A. No.

8 Q. Did you have any -- were you a participant  
 9 in any ESOP or ERISA plans prior to joining Suburban  
 10 Federal Savings Bank?

11 A. I don't believe so.

12 Q. So '91, you joined Suburban Federal  
 13 Savings, is that correct?

14 A. Yes.

15 Q. According to your resume you're vice  
 16 president of commercial real estate. Was that your  
 17 financial position or --

18 A. Yes, it was.

19 Q. Can you go through your position while at  
 20 Suburban? Can we call it Suburban?

21 A. Absolutely.

22 Q. Save some words.

23 A. Absolutely.

24 Q. While at Suburban can you go through your  
 25 positions?

0012  
 1 A. I started out, as far as a job title, as  
 2 assistant vice president, and mainly was responsible  
 3 for loan review and asset quality. The company had  
 4 been under a cease and desist order with OTS prior to  
 5 my getting there, so there were problems with the  
 6 commercial lending portfolio, they had some bad  
 7 loans.

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8 Q. Had you examined them?  
9 A. No.  
10 Q. I'm sorry to interrupt.  
11 A. No, I had never worked on anything with  
12 Suburban. There might have been one letter or  
13 something really minor. It was not in my case load.  
14 Q. You were assistant VP for how long?  
15 A. Assistant VP, I'm going to guess I had  
16 that title for probably two years or so before I was  
17 actually promoted to vice president. I don't recall  
18 the exact date.  
19 Q. Then as vice president what were your  
20 duties?  
21 A. Around the time I became vice president,  
22 my recollection, we had taken the company -- we had  
23 gotten out from under the cease and desist order,  
24 which was cleaning up the loan portfolio. We took  
25 the company through an IPO, went stock. At that  
0013  
1 point my responsibilities, while I was still in  
2 charge of loan review and asset quality, I became  
3 more in the sales end of the business and, you know,  
4 going out and finding commercial loans the bank could  
5 make.  
6 Q. So you had been loan review and asset  
7 quality as an assistant VP. In effect, when you  
8 became VP you added sales for commercial loans?  
9 A. Yes. Yes.  
10 Q. This IPO, did you receive many -- any  
11 remuneration from this IPO?  
12 A. Well, I believe it's part of the public  
13 record. As being part of senior management, yes, I  
14 had received shares of stock in a number of ways and  
15 also had a severance agreement. All that was done in  
16 conjunction with the IPO.  
17 Q. Let's talk about that. When you came as  
18 assistant VP did you enter into an employment  
19 contract or were you an employee at will? Do you  
20 know the difference?  
21 A. Yes.  
22 Q. Okay.  
23 A. I did not have -- to my recollection I did  
24 not have any type of agreement or contract at that  
25 time.  
0014  
1 Q. When was the first time that you had an  
2 employment contract?  
3 A. It was not an employment contract, it was  
4 a severance agreement.  
5 Q. When did you first have a severance  
6 agreement?  
7 A. It was done in conjunction with the  
8 company going public, PO.  
9 Q. Can you tell me generally what you  
10 remember about the severance agreement?  
11 A. Well, it was a dual-pronged severance  
12 agreement. The regulators had strict requirements  
13 for severance agreements for, you know, employees,  
14 knowing that from working for OTS. So there had to  
15 be two conditions for me to collect on the severance  
16 agreement, being a change in control of the company  
17 and significant change in duties.  
18 Q. Was that severance agreement still in  
19 place when Fifth Third bought out Suburban?

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20 A. Yes. Yes.  
 21 Q. You eventually became corporate secretary  
 22 for the holding company?  
 23 A. Yes.  
 24 Q. When was that?  
 25 A. Probably -- and I don't remember exactly  
 0015 but my guess is it was in conjunction with the IPO or  
 1 shortly thereafter.  
 2 Q. What were your duties as corporate  
 3 secretary?  
 4 A. Mainly to sign minutes and sign corporate  
 5 documents.  
 6 Q. Were you ever a member of the board?  
 7 A. No, I was not.  
 8 Q. Now, do we need to make a distinction  
 9 between Suburban Federal and Suburban Bancorp., Inc.  
 10 as far as our discussions here?  
 11 A. I don't know. It's up to you. I mean,  
 12 Suburban -- to my recollection, Suburban Federal  
 13 Savings Bank was the only subsidiary of the holding  
 14 company.  
 15 Q. No others?  
 16 A. Correct.  
 17 Q. Okay. Let's just call them Suburban then.  
 18 There's no -- I don't think there's any issues here.  
 19 MR. MORAN: Correct. Correct.  
 20 Q. When you first got to Suburban, was there  
 21 an ESOP or an ERISA plan in place?  
 22 A. Not to my knowledge. I know there wasn't  
 23 an ESOP, couldn't have been because there was no  
 24 stock.  
 0016 Q. When was the ESOP created?  
 1 A. With the IPO and the stock conversion.  
 2 Q. Were you involved in the creation of the  
 3 ESOP?  
 4 A. No.  
 5 Q. Who was?  
 6 A. Well, when you say "involved in the  
 7 creation" of it, if you could clarify that for me.  
 8 Q. Okay. Did you have any input into how the  
 9 ESOP would be set up?  
 10 A. No. No.  
 11 Q. You've got to wait until I finish the  
 12 question.  
 13 A. I'm sorry.  
 14 Q. Who, in your mind, was the one -- the  
 15 person or persons who were in force behind creating  
 16 an ESOP at Suburban?  
 17 A. It's my understanding, not being involved  
 18 directly, that it would be our president of the  
 19 company, Joe Hutchison, our CFO, Christopher Henn. I  
 20 don't know the extent of any of the board members'  
 21 involvement. They could or could not have been, but  
 22 I don't know that. And then possibly our corporate  
 23 counsel.  
 24 Q. Who was that?  
 0017 A. There may have been more than one but I  
 1 think it was Housley and Kantarian, some other names  
 2 out of Washington, D.C. But there also could have  
 3 been Fifth Third, there could have been other  
 4 companies that were administrating some plans. Since

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6 I wasn't involved, I don't know.  
7 Q. Do you recall as corporate secretary  
8 signing some documents relating to the ESOP?  
9 A. I'm sure I did. I can't remember any  
10 specific documents, but as corporate secretary I  
11 signed a lot of documents.  
12 Q. Were you a member -- strike that. Were  
13 you a participant in the plan?  
14 A. Yes, I was.  
15 Q. From the start?  
16 A. Yes.  
17 Q. You said you have been deposed before,  
18 correct?  
19 A. Yes.  
20 Q. How many times?  
21 A. Once or twice.  
22 Q. Any deposition relating to banking or  
23 thrift issues?  
24 A. I'm trying to recall the exact case I was  
25 involved in. No, it was in regards -- the deposition  
0018 was in regards to a troubled commercial loan at  
1 Suburban Federal.  
2 Q. Was the loan involved with any of the  
3 participants in the Suburban ESOP, were they parties  
4 to the loan?  
5 A. No.  
6 Q. It was somebody outside of Suburban?  
7 A. Yes.  
8 Q. And that's the only deposition you recall?  
9 A. That I recall, that's correct.  
10 Q. Do you know if there were any guarantees  
11 when the ESOP was created, guarantees on the loan  
12 with the ESOP?  
13 A. On which loan?  
14 Q. Well, let's talk about the loan. How many  
15 loans were there creating the ESOP?  
16 A. I don't know.  
17 Q. Was there more than one?  
18 A. I don't know.  
19 Q. Do you know if anybody guaranteed any of  
20 the loans creating --  
21 A. No, I don't, no knowledge.  
22 Q. You never discussed that with anyone?  
23 A. No.  
24 Q. Did you understand that there was at least  
25  
0019 one loan?  
1 A. Yes, I believe -- yes.  
2 Q. What did you understand the reason for the  
3 loan to be?  
4 A. It just helped acquire the shares of stock  
5 that would be eventually distributed to the  
6 participants, so it was a funding mechanism.  
7 Q. Do you know if there were any bonds issued  
8 in regards to that ESOP?  
9 A. No, I don't.  
10 (Exhibit 3 was marked for identification.)  
11 Q. You've been handed what's been marked as  
12 Exhibit 3. Have you ever seen that document before?  
13 A. I believe so.  
14 Q. It's the current complaint in this case.  
15 Do you understand that?  
16 A. Yes.  
17



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18 Q. Could you turn to page -- to paragraph  
19 number 4?  
20 A. Okay.  
21 Q. First phrase in that paragraph says, "This  
22 Class consists of up to one hundred persons within  
23 and outside the State of Ohio." Do you know that to  
24 be accurate? Strike that, let me change it.  
25 How many people do you believe are the  
0020  
1 class members in or were to be class members in this  
2 case?  
3 A. Somewhere between -- something less  
4 than -- up to 100 people.  
5 Q. Was it less than 50?  
6 A. I don't know. We had -- we had over 50  
7 employees at the bank and at Suburban.  
8 Q. You had prior?  
9 A. Uh-huh. I don't have a head count of  
10 exact dates so I don't -- to my knowledge it would be  
11 less than 100 people, probably more than 40  
12 something.  
13 Q. You don't know?  
14 A. I don't know an exact number.  
15 Q. Attached to this complaint is an Exhibit A  
16 entitled "Affiliation Agreement." Do you see that?  
17 A. Yes, sir.  
18 Q. And at the bottom of the page are pages  
19 like A-1. See that?  
20 A. Yes.  
21 Q. Do you know where this document came from,  
22 this copy of this affiliation agreement?  
23 A. Well, this appears to be a copy of the  
24 agreement between Fifth Third Bank and Suburban  
25 relating to the acquisition of Suburban by Fifth  
0021  
1 Third Bank.  
2 Q. Let me rephrase my question then. Do you  
3 know where this copy came from? For example, turn to  
4 page A-27. That's not your signature, I presume?  
5 A. I don't see any signatures on the page.  
6 Q. That's what I'm wondering. Isn't this, in  
7 fact, a copy of the version that was attached to the  
8 Suburban Bancorp documentation sent out to  
9 shareholders and is not really a copy of the  
10 affiliation agreement?  
11 A. That would appear to be the case.  
12 Q. One of the reasons I'm asking is every  
13 copy we receive -- if you turn back to page A-15 and  
14 turn to page A-16, there isn't an A-16.  
15 A. I see.  
16 Q. That's what I'm trying to confirm, that  
17 this is taken from your documents you sent out to the  
18 shareholders of Suburban prior to their approval of  
19 the merger, do you know?  
20 A. No, I don't know.  
21 Q. Okay. Attached also to it is Exhibit B.  
22 See that?  
23 A. Yes.  
24 Q. Do you know what that is?  
25 A. Reads "Descriptive Timetable For  
0022  
1 Termination Of Suburban Bancorporation, Inc. ESOP."  
2 Q. Have you ever seen that document before?  
3 A. I believe I probably have.

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4 Q. Were you involved in drafting or  
5 negotiating that document?

6 A. No.

7 Q. So if you saw it it's in relation to this  
8 litigation, is that correct?

9 A. Yes.

10 Q. It wasn't at the time this document was  
11 being created that you were involved with that  
12 document?

13 A. I don't believe so. Not being involved in  
14 the ESOP, I don't believe so.

15 Q. Okay. Do you know who from Suburban was  
16 involved in creating or negotiating Exhibit B to  
17 Exhibit 3?

18 A. It would be my belief at this time, based  
19 upon, you know, my recollection of what happened, you  
20 know, back in '97, that it would have been Joe  
21 Hutchison and Chris Henn.

22 Q. That wasn't something you were involved  
23 with?

24 A. Correct.

25 (Exhibit 4 was marked for identification.)

0023  
1 Q. You've been handed what's been marked as  
2 Exhibit 4. Can you take a look at that document?  
3 Now, it's in different type than Exhibit A to Exhibit  
4 3, correct, different font?

5 A. Appears to be bigger print, larger font  
6 size.

7 Q. Pages aren't A something, they're just  
8 numbered, correct?

9 A. That's correct.

10 Q. If you turn to page 40, in fact, there are  
11 two page 40s, but the second one, that is your  
12 signature?

13 A. That appears to be my signature.

14 Q. And is that Mr. Hutchison's signature?

15 A. Appears to be Joe's signature.

16 Q. You recognize his signature?

17 A. Uh-huh.

18 Q. Correct?

19 A. Yes, I do.

20 Q. Were you involved in the negotiation of  
21 the affiliation agreement marked as Exhibit 4?

22 A. No, I don't believe so. No.

23 Q. Turn to page 33 of Exhibit 4.

24 A. Okay.

25 Q. The paragraph with capital letter F.

0024  
1 A. Okay.

2 Q. Do you see that?

3 A. Yes.

4 Q. Was it your understanding that this  
5 paragraph existed in this document at the time you  
6 signed it?

7 A. What was your question again? I'm sorry,  
8 I just finished reading paragraph.

9 Q. That's fine. Was that paragraph in the  
10 document when you signed it?

11 A. I don't know.

12 Q. Do you have any reason to believe it  
13 wasn't?

14 A. No.

15 Q. Do you believe this Exhibit 4 to be a true

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16 and correct copy of the affiliation agreement signed  
17 by you on or about March 13 of 1997?

18 A. I can only say it's got my signature on  
19 page 40. It's a 40 page document.

20 MR. FISCHER: Can we stipulate, this is  
21 the best we could find.

22 MR. MORAN: Yeah. I mean, I have no  
23 reason to believe that that's not the  
24 affiliation agreement, John.

25 MR. FISCHER: There's so many copies, I'm

0025

1 trying to get us all on the same page.

2 MR. MORAN: We'll stipulate that Exhibit 4  
3 is the affiliation agreement.

4 Q. Now, did you have any discussions with  
5 anyone at -- strike that.

6 Who at Suburban was negotiating the  
7 affiliation agreement with Fifth Third?

8 A. Well, when I answer this, it's my  
9 understanding Joe Hutchison and Chris Henn were the  
10 people negotiating all of these items. I did not  
11 have specific knowledge at the time that there was  
12 this agreement or that agreement or affiliation  
13 agreement or so on and so forth. My role was in  
14 commercial lending and --

15 Q. You ended up signing because you were the  
16 secretary?

17 A. I signed as a, what's the word, just as  
18 the formal acknowledgment on behalf of the Bancorp, I  
19 was not involved in any negotiations of any of these  
20 documents. I was not aware of specific documents  
21 being negotiated until they were presented to me to  
22 sign.

23 Q. Let's shorten this, maybe shorten this  
24 deposition then.

25 Did you have any discussions with anyone

0026

1 prior to March 13, 1997, about anything in the  
2 affiliation agreement relating to ERISA or ESOP?

3 A. ERISA, no. ESOP, I was under -- I had the  
4 understanding that, knowing we had an ESOP, that it  
5 was going to be, you know, distributed to the  
6 employees at some point in time, that it was going to  
7 stay in place for the time being and, you know, it  
8 was part of the agreement with Fifth Third. So I had  
9 a knowledge that the ESOP was in place and that there  
10 were things that were going to have to be done with  
11 it before it could be terminated, and that it was  
12 some type of focus of the acquisition of Suburban  
13 Federal.

14 Q. Anything else you recall?

15 A. No, not specifically.

16 Q. Were you ever a member -- strike that.  
17 Did the Suburban Bancorp ESOP have a plan committee  
18 that oversaw it?

19 A. You know, I don't recall.

20 Q. Were you ever a member of that -- of that  
21 committee that oversaw the ESOP?

22 A. No. If I would have been a member I would  
23 have read if there was one.

24 Q. Do you recall who at Suburban, to your  
25 mind, oversaw the ESOP for Suburban Bancorp.

0027

1 participants?

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2 A. You know, I don't have specific knowledge.  
 3 My guess would be, looking back, you know, Joe as  
 4 president, Chris as CFO, and whoever the  
 5 administrator of the plan was, along with possibly  
 6 outside counsel. I mean, I was not involved so I  
 7 don't -- didn't take any of my time to look at that  
 8 or just wasn't something I got involved in.

9 Q. Your only involvement with the Suburban  
 10 Bancorp ESOP was as a participant, is that correct?

11 A. Other than -- yes, other than signing as  
 12 corporate secretary when I was required to sign  
 13 something, that's correct.

14 Q. But you didn't go and -- when you signed  
 15 them, go back and analyze whether they fit the ERISA  
 16 rules or anything like that?

17 A. That's correct, I did not do anything like  
 18 that.

19 Q. Since March 13 of '97 have you had any  
 20 discussions with anyone, other than counsel, about  
 21 the Suburban Bancorp ESOP plan?

22 A. Yes.

23 Q. With whom?

24 A. Chris Henn, Joe Hutchison, and probably a  
 25 few of the other former Suburban employees. I don't

0028 1 remember exactly whom but I would have discussed this  
 2 lawsuit with the other employees in conjunction with  
 3 the filing of the lawsuit, getting their names and  
 4 addresses, so on, so forth.

5 Q. What did you discuss with Mr. Henn about  
 6 the Suburban Bancorp ESOP?

7 A. Essentially we discussed our case, what  
 8 our understanding was, what each of our understanding  
 9 was regarding the ESOP and the termination and  
 10 distribution.

11 Q. What did he say his -- strike that. These  
 12 discussions all took place after March 13 of '97,  
 13 correct?

14 A. Yes.

15 Q. What did Mr. Henn tell you after March 13,  
 16 '97 about his understanding of what was to happen  
 17 with the Suburban Bancorp ESOP?

18 A. Well, what he told me coincided with my  
 19 understanding at the time, was that the ESOP was for  
 20 the benefit of all the former Suburban Federal  
 21 employees and that it would be distributed to us and  
 22 ultimately terminated once the plan was fully -- once  
 23 the ESOP was fully distributed in accordance with all  
 24 the IRS and ERISA and who knows all the different  
 25 regulations that apply to that type of plan.

0029 1 Q. So you understood that there was IRS and  
 2 ERISA rules that would apply?

3 A. At the time I only understood IRS. I have  
 4 not been involved with ERISA. So it's only been  
 5 since the class action suit was filed have I really  
 6 heard anything about ERISA or understood ERISA could  
 7 come into play.

8 Q. Do you understand there's been no class  
 9 certified in this case?

10 A. No, I don't.

11 Q. Do you understand that there's been no  
 12 motion to certify a class in this case?

13 A. I'm not aware of that.

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14 Q. Okay. Anything else Mr. Henn tells you  
15 after March 13, 1997 about the Suburban Bancorp ESOP?

16 A. Well, I mean, we probably -- since it's  
17 been ten years or nine years or eight years, I guess,  
18 I'm sorry, we have probably had a number of  
19 discussions. Without being more specific --

20 Q. Well, I'm asking any discussions, any  
21 discussions you've had with Mr. Henn about the  
22 Suburban Bancorp ESOP since March 13, 1997.

23 A. Sure. All of our discussions have been  
24 centered on that this plan was created for Suburban  
25 Federal employees and to be fully distributed to us

0030

1 in accordance with all the regulations that may be  
2 applied. And that, in fact, following 1999 when the  
3 plan was terminated by Fifth Third, that that was  
4 something that was not done in the spirit and in  
5 conformance with the affiliation agreement and any  
6 other agreement that may have existed between the two  
7 companies regarding the acquisition.

8 So that the ESOP, essentially the Suburban  
9 Federal employees did not get all the shares that we  
10 were entitled to.

11 Q. And that's based on?

12 A. Based upon --

13 Q. Just based upon your discussions with  
14 Mr. Henn, and anything else?

15 A. And while I was at Suburban, you know,  
16 being part of senior management. We had a weekly  
17 management meeting, and the people like myself, our  
18 vice presidents who sat in on that weekly meeting, I  
19 mean, we were kept apprised on some kind of general  
20 level by Joe and Chris how the negotiations were  
21 going. So I also became aware through those  
22 management meetings through --

23 Q. What was said at those management meetings  
24 about the ESOP?

25 A. I can't remember anything specific. But

0031

1 my understanding of how the ESOP was going to -- was  
2 supposed to work was, in part, based upon information  
3 that was communicated to us prior to the actual  
4 closing date of the transaction.

5 Q. What was communicated to you prior to the  
6 closing?

7 A. That the ESOP was for the Suburban Federal  
8 employees and that eventually it would be all the  
9 shares in and the assets of the plan would be  
10 distributed to all of us.

11 Q. Have you ever read the affiliation  
12 agreement?

13 A. I have not read it. I probably paged  
14 through it at some point in time, either before or  
15 after the closing date of the acquisition.

16 Q. So the affiliation agreement did not form  
17 the basis for your view, correct?

18 A. That's correct.

19 Q. As part of your, let's say -- I'm trying  
20 to frame a time, say '97, the start of 1997, what did  
21 you understand your compensation package to entail at  
22 Suburban Federal?

23 A. Well, I had a base salary. I was eligible  
24 for annual bonuses upon my performance in my job. I  
25 had -- I was under the management retention program

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0032

1 at Suburban. I -- I'm trying to word this correctly.  
 2 I had stock options, incentive stock options, that  
 3 were all part of the IPO and those were benefits to  
 4 me as long as I stayed there because there was a  
 5 vesting period. The 401(k) plan and profit sharing  
 6 plan.

7 Q. Those were two different plans?

8 A. I believe it was -- no, it was the same  
 9 plan, it was 401(k) and profit sharing, I believe.

10 Q. That's what we've been talking about as  
 11 the ESOP?

12 A. No, those are two different things.

13 Q. You've got the 401(k)/profit sharing plan,  
 14 correct?

15 A. I believe that's what it was called.

16 Q. The ESOP was another benefit?

17 A. Yes.

18 Q. Okay. Was there medical?

19 A. Yes, medical benefits, your typical health  
 20 coverages, so on and so forth, that we all have in  
 21 our jobs.

22 Q. Anything else?

23 A. I had the severance agreement that we  
 24 talked about before.

25 Q. Anything else?

0033

1 A. I believe that's it.

2 Q. Then in return for you working there you  
 3 were to be compensated with this salary, possible  
 4 bonuses and these other benefits --

5 A. Correct.

6 Q. -- we just listed?

7 A. That's correct.

8 (Exhibit 5 was marked for identification.)

9 Q. You've been handed what's been marked as  
 10 Exhibit 5. Do you recognize that document,  
 11 Mr. Buchheid?

12 A. Yes.

13 Q. And on page 3, that's your signature?

14 A. Yes, it appears to be.

15 Q. Do I take it from this document, then,  
 16 that your employment with Suburban ended on July 25,  
 17 1997?

18 A. Yes.

19 Q. Just to be accurate, on your resume the  
 20 Suburban Federal, which is Exhibit 2, really was  
 21 through 7/97, then you started at Huntington 8/97?

22 A. That would be correct.

23 Q. I'm just trying to get the dates.

24 A. Uh-huh. Yeah, I worked for Suburban until  
 25 the last day, which I believe was the 25th day of

0034

1 July '97.

2 Q. If you could turn to paragraph 4, there's  
 3 a sentence in that paragraph, quote, "Without  
 4 limiting the generality of the foregoing, neither  
 5 Fifth Third nor Individual" -- which would be you,  
 6 correct Mr. Buchheid, where it says individual?

7 A. I believe I'm probably defined as an  
 8 individual up front, yes.

9 Q. -- "specifically agree that neither of  
 10 them shall disclose information regarding this  
 11 Agreement to any current or former employee of

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12 Suburban except as required by law or as the parties  
13 may mutually agree." Have you followed that  
14 requirement?

15 A. I believe I have.

16 Q. Okay. And did you understand under  
17 paragraph 5 that you were covenanting not to sue and  
18 to fully release and discharge Suburban and Fifth  
19 Third with respect to any further payments to be made  
20 to you under the employment contract with respect to  
21 the termination thereof or rising out of or in any  
22 way connected with your termination of employment at  
23 Suburban?

24 A. That's what they -- that's what they asked  
25 me to sign.

0035

1 Q. And you signed it?

2 A. And I signed it.

3 Q. After July 25 of 1997 did you receive  
4 distributions from the Suburban ESOP?

5 A. Yes.

6 Q. Okay. Do you recall how much?

7 A. It's about 270, 260 thousand dollars.

8 Q. Then you also received your 401(k)  
9 distributions, et cetera?

10 A. Separately, yes.

11 Q. You received them?

12 A. That's correct.

13 Q. You're not claiming here that anything  
14 else was withheld other than some distribution of  
15 some type?

16 A. To my knowledge what was in the plans,  
17 those respective plans, that's correct, it's my  
18 understanding that full disposition of my 401(k) was  
19 made.

20 Q. Could you turn to Exhibit 3, which is the  
21 complaint?

22 A. Okay.

23 Q. When were you first aware of negotiations  
24 between Suburban and Fifth Third for a merger?

25 A. You know, sometime in early '97. I mean

0036

1 it could have been late '96 but I would -- I would --  
2 I think it was early '97 sometime.

3 Q. I know I've sort of asked you this  
4 question, I'm going to try to get it again so I  
5 understand your testimony.

6 From that time in early '97 or late '96  
7 through March 13 of '97 you received weekly updates  
8 on the negotiations, is that correct?

9 A. No, I wouldn't characterize it that way.

10 During our weekly management meetings, which were  
11 held to run the bank and deal with all the issues of  
12 running the bank, from time to time my recollection  
13 is that we periodically would be updated by primarily  
14 Joe as far as the status of the sale of the bank.

15 Q. Were there other suitors of the bank?

16 A. Yes. There were -- there were a couple  
17 other institutions that looked at us.

18 Q. In the same time frame?

19 A. Well, I don't think it was concurrently.

20 Q. Okay.

21 A. Probably prior to Fifth Third. Not to say  
22 that there weren't concurrent ones. The scope of my  
23 responsibilities were such that I just wouldn't have

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24 been involved until somebody would have come in and  
 25 done due diligence on the loan files. There were one

0037

1 or two out of market banks that I can't recall the  
 2 name that looked at acquiring us. We had looked at a  
 3 couple one or two mergers with other local companies  
 4 of similar size.

5 Q. Were you aware, prior to March 13, '97,  
 6 that the potential existed that a lot of management  
 7 at Suburban would lose their jobs if a merger was to  
 8 take place with Fifth Third?

9 A. Would you repeat that question? I'm  
 10 sorry.

11 Q. Prior to the signing of the affiliation  
 12 agreement, which was March 13 of '97, were you aware  
 13 for the potential that you and other management at  
 14 Suburban would lose their jobs in a merger with Fifth  
 15 Third?

16 A. No.

17 Q. Were you told anything about staying on  
 18 prior to the affiliation agreement?

19 A. It's very difficult to recall, you know,  
 20 did I remember something before or after that date.  
 21 Having said that, there was no discussions -- there  
 22 were no decisions made at all regarding our continued  
 23 employment with Fifth Third post acquisition.

24 Q. Prior to March 13?

25 A. I believe that's the case. It was our

0038

1 understanding that, you know, if any bank acquired us  
 2 we may or may not keep our jobs.

3 Q. When did you find out that you would not  
 4 be keeping your job?

5 A. Not until -- well, not until close to the  
 6 very end. We knew -- I mean my job was head of  
 7 commercial lending for Suburban Federal. Obviously  
 8 that job was going away with the acquisition of  
 9 Suburban Federal. Was I going to get a commensurate  
 10 job with Fifth Third? I didn't know that until I had  
 11 interviewed with them, and somewhere close to the  
 12 July of '97 date, somewhere very close to the end,  
 13 did I find out that I was not going to be retained.

14 Q. So sometime, though, after March 13 of '97  
 15 you understood there was a potential --

16 A. Oh, sure.

17 Q. -- you would not keep your job?

18 A. Sure, we understood there was a potential.

19 Q. And did you discuss that with Mr. Henn?

20 A. I would think we did.

21 Q. With Mr. Hutchison?

22 A. Yes.

23 Q. I'm sure it was a topic, wasn't it, of the  
 24 discussion in the halls of Suburban Bancorp over who  
 25 was going to keep the jobs or not?

0039

1 A. I'm sure it came up from time to time.

2 Q. It's just human nature, isn't it?

3 A. Yeah, I agree.

4 Q. All right. Prior to signing Exhibit 5 you  
 5 did understand that you would not be further employed  
 6 by Fifth Third, isn't that correct?

7 A. That's correct.

8 Q. At least we know prior to July 25 you knew  
 9 that?



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10 A. At some point. It could have been May or  
 11 June, honestly I don't remember, because I had  
 12 several interviews with them and they talked -- but  
 13 this -- this document was the culmination of  
 14 almost -- you know, of everything that happened, that  
 15 it was recognized I wasn't going to have a job with  
 16 Fifth Third. I was asked to sign this document.

17 Q. Okay. While you were a Suburban employee  
 18 did you ever receive documents from -- did you ever  
 19 receive -- strike that.

20 While an employee of Suburban did you ever  
 21 receive what are called summary plan descriptions of  
 22 various ERISA plans, either the 401(k) or the ESOP?

23 A. I believe so.

24 Q. So you received some type of information  
 25 periodically, correct?

0040

1 A. Yes.

2 Q. Mr. Buchheid, you brought a lawsuit for  
 3 damages, do you understand that?

4 A. Yes.

5 Q. How much were you, John Buchheid,  
 6 allegedly harmed by the actions of Fifth Third?

7 A. I have no idea what the dollar amount  
 8 would be.

9 Q. Okay. To the best of your recollection  
 10 who in management at Suburban were kept on by Fifth  
 11 Third after July 25 of 1997?

12 A. Of the -- you're asking me the former  
 13 Suburban management?

14 Q. Yes.

15 A. I believe it was only one person.

16 Q. Who was that?

17 A. Lisa Henn. Lisa Whitman.

18 Q. I take it she's related to Mr. Henn?

19 A. Yes. They're now married.

20 Q. Now, who did you consider management to be  
 21 on July 24 of 1997 for Suburban?

22 A. Joseph Hutchison, Christopher Henn,  
 23 myself, Paul Neiser, Bob Zihlman, Mark Brandon, and  
 24 Lisa Whitman. And I hope I'm not forgetting anyone.

25 Q. Were there -- do you understand what the

0041

1 phrase "highly compensated individuals" means?

2 A. I've heard the term used in a number of  
 3 different contexts.

4 Q. How about in the ERISA context, do you  
 5 know what that means?

6 A. I would, I would -- I would have no idea  
 7 how ERISA defines that term.

8 Q. Were there other -- strike that. And I  
 9 don't want to go in people's individual backgrounds  
 10 too much, but can I take it that the seven people you  
 11 listed in management at Suburban were making more  
 12 than \$100,000 a year at the time immediately prior to  
 13 the merger?

14 A. You're asking me were they?

15 Q. Yes.

16 A. In base compensation?

17 Q. Plus annual bonus?

18 A. No.

19 Q. Okay. Do you know what their salary plus  
 20 bonus would have been approximately for any time  
 21 period?

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22 A. No.  
 23 Q. Were you one of the management people  
 24 that, for public filings, had to have your base  
 25 salary and bonuses disclosed?  
 0042  
 1 A. Yes. I think there's several rules  
 2 applying in different situations. In some cases it  
 3 was just Joe Hutchison and I think in other cases  
 4 Chris and I were included and I don't believe other  
 5 managers were.  
 6 (Off the record.)  
 7 Q. Do you know who, in your estimation, at  
 8 Suburban, immediately prior to the merger with Fifth  
 9 Third, was making in excess of \$50,000 a year, would  
 10 you have knowledge of that?  
 11 A. I probably saw salaries like on federal  
 12 exam reports so -- but do I recall? No. Could I  
 13 guess? Yes.  
 14 Q. Well, probably is not admissible, but  
 15 could you guess for me, other than the seven we've  
 16 listed, who else was making more than \$50,000 a year?  
 17 A. Okay. Well, I'm not sure all seven of  
 18 those were making 50.  
 19 Q. Okay.  
 20 A. I could be wrong but I don't think  
 21 automatically they were. I don't think anyone else  
 22 was other than, you know, maybe five or -- four to  
 23 five or six on that list. I don't think any other  
 24 employee in the company made \$50,000.  
 25 Q. Of the employees at Suburban at the time  
 0043  
 1 immediately prior to the merger you said you thought  
 2 you weren't sure how many employees there were but  
 3 you thought maybe 40, correct?  
 4 A. Well, I think somewhere around 50, I think  
 5 is what I said.  
 6 Q. All right. 50?  
 7 A. 50 to 55 maybe, you know, part-time  
 8 people, you know.  
 9 Q. Do you know if every one of those 50  
 10 people approximately were participants in the  
 11 Suburban ESOP?  
 12 A. I don't know. I would assume they were  
 13 but I don't know.  
 14 Q. Do you know if there was a vesting period?  
 15 A. I believe there was a vesting period.  
 16 Q. Okay.  
 17 A. I believe we all became vested, I believe,  
 18 at the acquisition, all the vesting and all the plans  
 19 were accelerated. I believe that to be the case.  
 20 Q. Why do you believe that to be the case?  
 21 A. From general recollection I have of what  
 22 was discussed back then.  
 23 Q. What was discussed back then about  
 24 vesting?  
 25 A. Then all these vesting periods -- if there  
 0044  
 1 was an acquisition all the vesting would be  
 2 immediately accelerated in the case of an  
 3 acquisition.  
 4 Q. How did you learn that?  
 5 A. I may have read something but it was  
 6 probably from Joe and Chris.  
 7 Q. Conversation?

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8 A. Yeah. There may have been something I  
 9 read, too. I really can't put my finger on it at  
 10 this point in time. I'm sure in the case of the -- I  
 11 will say in the case of like a 401(k), which seemed  
 12 to have more ongoing disclosure on a regular basis,  
 13 that was very clear 401(k) plans. The MRP, the  
 14 incentive stock options, those cases, I knew what the  
 15 vesting was. The ESOP, I didn't know.

16 Q. So basic view is, you don't know what  
 17 really happened on vesting with the ESOP?

18 MR. MORAN: I think he said he believes.

19 A. I believe that and I was told that, as  
 20 with all the other benefit plans that had vesting  
 21 periods, that that also would become immediately  
 22 vested.

23 Q. And who told you that?

24 A. I believe it would be Joe and Chris.

25 Q. And do you recall when you were told that?

0045

1 A. No.

2 Q. Was it prior to July 25 --

3 A. Yes.

4 Q. -- of 1997?

5 A. Yes.

6 Q. Okay. No further questions at this time.

7 Thank you.

8 A. You're welcome.

9 MR. MORAN: We'll have signature please.

10 We'll take a mini and ascii and that's it. Can  
 11 you e-mail that, too?

12  
13

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 JOHN A. BUCHHEID

14  
 15  
 16 - - -  
 17 DEPOSITION CONCLUDED AT 2:18 P.M.  
 18 - - -  
 19  
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 21  
 22  
 23  
 24  
 25

0046

## C E R T I F I C A T E

1 STATE OF OHIO :

2 : SS

3 COUNTY OF CLERMONT :

4 I, Karen Volk, RPR, the undersigned, a duly  
 5 qualified and commissioned notary public within and  
 6 for the State of Ohio, do hereby certify that before  
 7 the giving of his aforesaid deposition, JOHN A.  
 8 BUCHHEID was by me first duly sworn to depose the  
 9 truth, the whole truth and nothing but the truth;  
 10 that the foregoing is the deposition given at said  
 11 time and place by JOHN A. BUCHHEID; that said  
 12 deposition was taken in all respects pursuant to  
 13 stipulations of counsel; that I am neither a relative  
 14 of nor employee of any of the parties or their  
 15 counsel, and have no interest whatever in the result  
 16 of the action; that I am not, nor is the court  
 17 reporting firm with which I am affiliated, under a

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18 contract as defined in Civil Rule 28(D).  
19 IN WITNESS WHEREOF, I hereunto set my hand and  
20 official seal of office at Batavia, Ohio, this \_\_\_\_  
21 day of \_\_\_\_\_, 2005.  
22  
23

24 My commission expires: Karen Volk, RPR  
25 September 17, 2007. Notary Public - State of Ohio